

**FILED**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION**

**DEC 19 2019**

Clerk, U.S. Courts  
District Of Montana  
Missoula Division

**LLOYD SCOTT MAIER,**

**CV 19-68-H-DLC-JTJ**

**Petitioner,**

**vs.**

**ORDER**

**LYNN GUYER,**

**Respondent.**

On November 26, 2019 United States Magistrate Judge John T. Johnston entered his Findings and Recommendation recommending that Petitioner Lloyd Scott Maier's petition for writ of habeas corpus under 28 U.S.C. § 2254 be dismissed with prejudice as time-barred without excuse. (Doc. 7.) Maier does not object.

A party is only entitled to de novo review of those findings to which he or she specifically objects. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings to which no party objects. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

In his Findings and Recommendation, Judge Johnston recommends dismissing Maier's petition as untimely. The Antiterrorism and Effective Death Penalty Act of 1996 imposes a one-year statute of limitations. On October 22, 2019, Judge Johnston provided Maier with an opportunity to show cause as to why his petition was not untimely. (Doc. 5.) This order explained to Maier how to make this showing. (*Id.* at 3–4.) Maier responded by arguing that the “newly discovered” recantation letter from a trial witness entitles him to relief. (Doc. 7 at 5.) Judge Johnston determined that even under “the most generous assessment” of this evidence, Maier's petition is over four years too late. (Doc. 7 at 4.) This determination is not clearly erroneous.

Additionally, and for the reasons indicated in the Findings and Recommendation, there is also no clear error in Judge Johnston's determination that Maier did not meet his burden to show “actual innocence.” Maier's petition will be dismissed with prejudice as untimely. Because jurists of reason could not disagree, a certificate of appealability will be denied.

IT IS ORDERED that Judge Johnston's Findings and Recommendation (Doc. 7) is ADOPTED in full.

1. Maier's Amended Petition (Doc. 4) is DISMISSED WITH PREJUDICE as time-barred without excuse.

2. The Clerk of Court is directed to enter a judgment in favor of Respondent and against Petitioner.

3. A certificate of appealability is DENIED.

DATED this 19<sup>th</sup> day of December, 2019.



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Dana L. Christensen, Chief Judge  
United States District Court